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author calls "the firm guidance of North America" will be needed to bring about "the entire abrogation of the law of prize at sea" (pp. 190-191). Apparently the first requisite will be to create a clear understanding of what such abrogation comprehends, so that when we talk of the abolition of the law of prize we may either actually mean what we say or else say only what we mean.

J. B. Moore.

THE LAW OF EVIDENCE. By SIDNEY L. PHIPSON. Fifth edition. London: STEVENS & HAYNES. 1911. pp. lxxix, 743.

A treatise on evidence which has passed through five English editions in less than twenty years must have merits which make a strong appeal to the profession. While the freshness and fulness of the work, its abundant use of cases and its apposite grouping and arrangement of authorities, make it a valuable work of reference for law students, it is distinctly a practitioner's handbook. With its 6,000 citations, which, the author believes, "practically exhaust the English case-law of the subject," and with its avoidance of theorizing and speculation, it supplies the greatest quantity of digested and ready-to-be-used information as to the law of evidence of any book with which the writer is acquainted. Of particular value to one who would "run down" a point through all the cases bearing on it, is the digest of contrasted decisions arranged in parallel columns, on the one hand the cases in which evidence of a particular sort was admitted and on the other where it was held inadmissible. As the cases all deal with the law of a single jurisdiction and not with that of fifty competing jurisdictions, the result is not the chaos which such a method would result in on our side of the water but an orderly arrangement of authorities through which the clear, advancing line of the law can be traced.

All this might have been said of any of the earlier editions of Mr. Phipson's work. In plan and scope it remains the same. What is new is such change as has been called for by the passing of "a considerable number of statutes dealing either wholly or in part with the subject of evidence," and a thorough revision of the text and notes, involving the incorporation of the results of some five hundred new decisions rendered since the completion in 1907 of the fourth edition. The index, already one of the best of its kind, has been enlarged and made still more useful. The principal statutes, such as the Criminal Evidence Act (1898) and the Oaths Acts of 1838, 1888, and 1909, are printed in an appendix.

G. W. Kirchwey.

OBSCENE LITERATURE AND CONSTITUTIONAL LAW. By THEODORE SCHROEDER. New York. Privately Printed. 1911. pp. 439.

It is a pity that this serious plea for cleanness of thought and freedom of speech should not have been presented in more readable form. Though put forth as a book, it is in reality a collection of pamphlets on various aspects of the problem which the author has published from time to time in many different periodicals and which are here brought together "for forensic uses." For this purpose—as an arsenal of arguments, illustration, satire, and eloquence to be drawn on by public advocates of "unlicensed printing"—the work leaves little to be desired. But the reader who would, at a reasonable expenditure of time, get a clear view of the argument, is dismayed by the overlapping of chapters, the vain repetitions, the heaped up

illustrations of a book hastily made, as the author describes it, "by the use of a pastepot and some magazine articles."

The author is a well-known member of the legal profession, "Counsellor to the Medico-Legal Society of New York," but it is not as a lawyer but rather as an agitator and propagandist that he presents himself in the work before us. It is true he examines and criticizes many judicial decisions and several of his chapters (XIX-XXII) are devoted to a consideration of the "due process" clause of the Federal Constitution; but that the book is aimed at the general rather than the professional reader is indicated by such titles as "Obscenity, Prudery and Morals," "Psychologic Study of Modesty and Obscenity," "Vanities of Official Modesty," and the like. It is in fact not a "forensic" but an impassioned "defense of freedom of the press."

Of course the author has no difficulty in showing that the censorship exercised by the postal authorities, the police, societies for the suppression of vice, and by the courts is usually unintelligent and often incredibly stupid. Such cases as the suppression by the Post Office Department in 1907 of a medical journal for advertising Dr. Sanger's "History of Prostitution," "which from its very name (Thus the sapient Acting Assistant Attorney General for the Post Office Department) is clearly indecent and unfit for circulation through the mail," and the refusal of the same enlightened governmental authority to permit the circulation last year of the Chicago Vice Commission Report, are unhappily not exceptional. Equally convincing is the demonstration that there is no legal test of what constitutes obscene literature and that the "moral test," applied by the individual judge, policeman, or assistant postmaster general is as variable and uncertain as we should expect from such a diversity of moral censors.

Not so happy is our author's impeachment of the constitutionality of the power of regulation exercised by the Post Office Department and of the statutes and judicial decisions which restrict the liberty of speech and of the press. The more sweeping a constitutional provision, the more is there need of a certain "sweet reasonableness" in its interpretation.

The upshot of the whole matter is that the author fails in his argument for unlicensed printing, but succeeds where he seems to fail. The censorship of writings is only one aspect of the wider censorship which society exercises over the acts of its members. This censorship may be enforced by law and the law enforcing it may be constitutional. Our liberty, whether of speech or of action, is a restricted liberty, kept within the bounds prescribed by the moral sentiment of the time. This sentiment is not always intelligent, it is rarely progressive, it is never free, but such as it is, it is the necessary condition of an ordered social life. We may well aim to make it more intelligent, more progressive, freer; and we may confidently anticipate the time when within its ampler bounds there will be a wider liberty of action. It is as a contribution to this educational process that we may welcome Mr. Schroeder's plea for freedom of the press. His exposure of the absurdities and inconsistencies of the present system and of its fatal suppression of light and truth will hasten the coming of a better order.

G. W. Kirchwey.